

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

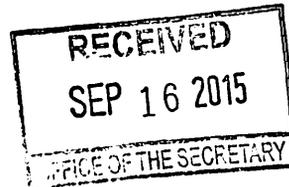
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**ADMINISTRATIVE PROCEEDING
File No. 3-16354**

In the Matter of

**David B. Havanich, Jr.,
Carmine A. DellaSala,
Matthew D. Welch, Richard
Hampton Scurlock, III,
Retirement Tax Advisory
Group, Jose F. Carrio, Dennis
K. Karasik, Carrio, Karasik &
Associates, LLP, and Michael
J. Salovay,**

Respondents.



**DIVISION OF ENFORCEMENT'S POST-HEARING REPLY BRIEF IN SUPPORT OF
ITS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Division of Enforcement ("Division") submits this Reply Brief in Support of Its Proposed Findings of Fact and Conclusions of Law.

I. Respondents' Proposed Findings of Facts

Respondents do not take direct issue with *any* of the Division's proposed findings of fact. On the issue of broker status, Respondents request a finding that Scurlock acted no differently with respect to Diversified than he did with respect to other products. (Respondents' Proposed Finding of Fact ("RPF") ¶ 2) However, in its ADV form, RTAG states that Diversified is compensating RTAG directly and that investments in Diversified would fall outside the percentage-of-assets-under-management fee that RTAG charged its clients. (DX15, Item 5, at p.5) The form specifies no other company with which RTAG had a similar arrangement.

Respondents also request findings that Scurlock acted as a finder and not as a broker. (RPF ¶¶ 3, 5) However, these are conclusions of law, and, as the Division demonstrated in its initial brief, the undisputed facts demonstrate that Respondents acted as brokers within the meaning of Exchange Act Section 15(a).

On the issue of Scurlock's interactions with the Kentucky Division of Financial Institutions ("DFI"), since Section 15(a) is a strict liability offense, Respondents' communications with DFI are pertinent only to the issue of the appropriate remedy. While Respondents claim that Scurlock discussed with DFI in advance his plan to sell Diversified bonds (RPF ¶ 9), that finding should not be credited for the reasons stated in the Division's proposed findings. (Division's Proposed Finding of Fact ("DPF") ¶ 27 n.3)

Finally, with respect to the DFI Email sent on June 2, 2011 (DX25), the Division does not dispute that Scurlock received it; the point, as detailed in DPF ¶ 33 n.4, is that the email clearly communicates DFI's position that Respondents had been violating Kentucky law and that Respondents did not rely on the email in continuing to sell Diversified bonds.

II. Respondents Violated Exchange Act Section 15(a)(1)

Respondents' arguments on this issue are the same as they made in pre-hearing filings, and the Division addressed in its initial brief Respondents' arguments that (a) Respondents' status as investment advisers excused them from registering as brokers (Division Proposed Conclusion of Law ("DPC") ¶¶ 5-6),¹ and (b) Respondents fall within a so-called "finders"

¹Respondents' reliance on Section 211(g)(1) of the Investment Advisers Act of 1940 ("Adviser Act") (miscited at page 7 of their filing as Section 211(g)(16)), is misplaced. That provision, added by the Dodd-Frank Act, Pub. L. No. 111-203, § 913(g)(2), authorizes the Commission to issue rules imposing upon brokers a standard of conduct no less stringent than the standard applicable to investment advisers under Advisers Act Sections 206(1) and 206(2) when providing personalized investment advice about securities. In a request for data relating to that potential rulemaking, the Commission noted:

exception to the registration requirement (*Id.* ¶ 7-9). There is simply no doubt that under the Exchange Act, as construed by the Commission and courts, Respondents' sale of Diversified bonds to 50 investors over a twenty-seven month period generating \$443,000 in commissions is activity requiring broker registration, and therefore the Division has established that Respondents violated Section 15(a)(1).

III. The Relief Requested by the Division Should be Imposed

On the issue of remedies, Respondents request no findings and dispute none of the Division's proposed conclusions of law. In particular, Respondents do not request any findings relating to their ability to pay, an issue on which they bear the burden of proof. Moreover, the Division's review of Respondents' Exhibit M-2, representing the back-up to Form D-A, indicates that Respondents did not submit all account statements and tax returns going back to 2010, the beginning of the violation. This failure to submit complete information is a sufficient basis to reject an inability-to-pay claim. *See David E. Zilkha*, AP File No. 3-13913, 2011 WL 1425710, *12 (Apr. 13, 2011) (Initial Decision).

CONCLUSION

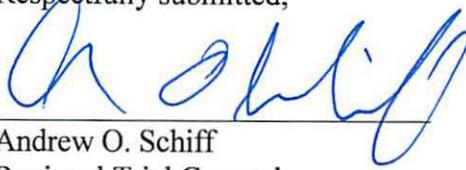
For the reasons set forth above and in the Division's initial brief, the Law Judge should find Respondents violated Exchange Act Section 15(a) and impose the sanctions requested by the Division.

that nothing in Section 206(1) and 206(2) of the Advisers Act prohibits the receipt of transaction-based compensation, such as commissions. A person engaged in the business of effecting transactions in securities for the account of others, would however, absent an available exemption, be required to register as a broker-dealer.

Release No. 34-69013, at 26 n.34 (Mar. 1, 2013), 78 Fed. Reg. 14848, 14855 n.34 (Mar. 7, 2013).

September 15, 2015

Respectfully submitted,



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CERTIFICATE OF SERVICE

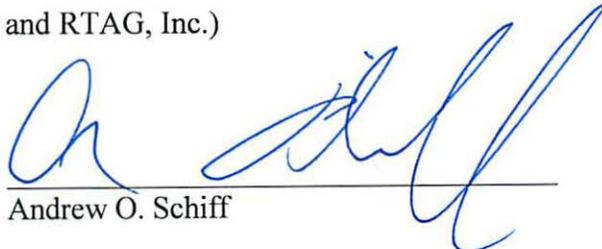
I hereby certify a true and correct copy of the foregoing has been served by e-mail and UPS overnight mail, on this 15th day of September 2015, on the following persons entitled to notice:

The Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Mr. Michael J. Salovay

████████████████████
Pittsburgh, PA ██████████

Andre F. Regard, Esq.
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(Counsel for Richard Hampton Scurlock, III and RTAG, Inc.)



Andrew O. Schiff



Office Memorandum

SECURITIES AND EXCHANGE COMMISSION

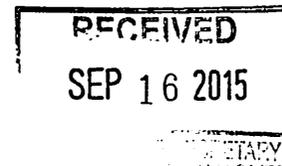
Miami Regional Office

DATE: September 15, 2015

TO: OFFICE OF THE SECRETARY

FROM: Andrew O. Schiff, Esq.
By: Jessica Benitez-Perellada, Paralegal

RE: **In the Matter of David Havanich, et al.**
Adm. Proceeding No. 3-16354



Enclosed please find the original and three copies of the Division of Enforcement's Post-Hearing Reply Brief in Support of its Proposed Findings of Fact and Conclusions of Law.

Thank you.